

### REMARKS

This is in response to the Office Action mailed November 02, 2006.

Applicants wish to note that the status of claim 21 is neither mentioned in the “Office Action Summary” section nor the “Detailed Action” section. The Examiner is reminded that as per MPEP 707.07(i), “**each pending claim should be mentioned by number**, and its treatment or status given” (emphasis added).

Further, with respect to claim 21, the Examiner on page 7 of the Office Action of 11/02/2006 argues about “modifying Togher to include **Foth** et [al.]”. The Examiner is respectfully requested to issue a clarification regarding why a reference is made to the Foth reference (which was the subject of the previous office action), if by the Examiner’s own words, the previously submitted arguments with respect to Foth were found to be persuasive enough to warrant a withdrawal of the previous rejection.

Also, with respect to many of the other pending claims, the Examiner again has issued an ambiguous rejection by first stating that the claims (such as, for example, claim 1 and 27) are rejected as being unpatentable over **Togher in view of Rosser**, but then **contradicts** himself by arguing that the teachings of **Togher can be combined with the teachings of Foth** (from the previous office action). Applicants respectfully request the Examiner to clarify this ambiguous rejection.

Applicants wish to note that the arguments below are addressed with respect to Togher and Rosser as the previous response details why the combination of Togher and Foth cannot teach or suggest the pending claims.

Applicants would like to address that there have been **numerous** non-final office actions (dated 11/19/2004; 6/27/2005; 12/21/2005; and the current action dated 05/24/06) since the appeal brief filed on 05/03/2004. Applicants would like to respectfully remind the Supervisory Patent Examiner that as per MPEP 707.02, “Application up for Third Action and 5-Year Applications,” the “supervisory patent examiners should impress their assistants with the fact that the shortest path to the final disposition of an application is by finding the best references on the first search and carefully applying the,” and “any application that has been pending five years should be carefully studied by the supervisory patent examiner and every effort should be made to terminate its prosecution.”

Further, as noted in the MPEP 707.05, “the Examiner should cite appropriate prior art which is nearest to the subject matter defined in the claims. When such prior art is cited, its pertinence should be explained.” Applicants have respectfully requested throughout this response that the examiner specifically show in the references used in the office action the described elements of the claims.

Applicants respectfully request that reconsideration of this application is given in view of this response, and Applicants contend that the claims are allowable.

### STATUS OF CLAIMS

Claims 1, 3-16, 21, and 23-28 are pending.

Claims 2, 17-20, and 22 are cancelled.

Claims 1, 3-16, 21, and 23-28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. 2005/0228748 (hereafter Togher) in view of U.S. 6,446,261 (hereafter Rosser).

### OVERVIEW OF CLAIMED INVENTION

The presently claimed invention provides an improved method of surveying prices located across an e-commerce environment (e.g., goods available in an auction, online catalog, or electronically connected supply center). The prior art has many systems which go out on the web and look-up prices and return the prices to the buyer. However, suppose a “small business” wanted to negotiate the absolute best price from various sources on 50 printers, but chooses not to reveal its identity for fear of an associated cost mark-up or lower discount; the present invention allows the use of sophisticated buyer profiles (previously created over time and recognized by the seller as such) to get the best quote. In this scenario, the sophisticated buyer profile may be disguised to look like a very large business to optimize a volume discount and you and the next buyer and the next buyer could use this large business profile to continuously get the best prices. The seller only thinks that a large business is purchasing large quantities of printers, and gives a maximum discount without ever knowing that in fact the repeated buying history is performed by many smaller businesses. The present invention further will complete the purchase without ever revealing to the seller the true identity of the purchaser.

Another feature of the current invention is a method to uncover price structures, for example, to the airfare market. Airlines do not publish their fare structure. They do not make it clear how the fare depends on the time of the day, the day of the week and the date. The buyer tells the desired time of travel and the airline returns a fare. Airline fares are repeatedly probed by the present system for uncovering such structures. It then suggests to the buyers how money can be saved by changing the requested time of the day, day of the week, etc.

The present invention provides for a system and method facilitating transactions between buyers and sellers in an electronic commerce (e-commerce) model. When an item of interest is selected, the system scours the Internet to find the lowest price available for the desired product or service. Based on posted prices, bid prices, posted quotes, quoted prices, and auctions, the present invention ascertains wholesale prices and offers "advice" about the desired product or service. From the collected wholesale prices, reference points are generated that allow a system to determine whether a particular vendor's pricing is reasonable. Reference points allow a user to be directed to those vendors typically having the lowest wholesale prices.

Furthermore, to enhance a competitive e-commerce marketplace, anonymous and fictitious user profiles comprising identities and reputations as sophisticated buyers are created to survey prices quoted by vendors. In this manner, statistical distributions based on prices anonymously gathered by the system are generated such that an individual buyer can compare the quote or price they receive from a vendor with those regularly observed by the system. The system also obtains specific quotes on behalf of a buyer using a fictitious name and identity. To

preserve the anonymity of an individual buyer, an option to receive a shipment of the desired product at location different from that of the buyer is also provided.

In the Claims

REJECTIONS UNDER 35 U.S.C. § 103

Claims 1, 3-16, 21, and 23-28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. 2005/0228748 (Togher) in view of U.S. 6,446,261 (Rosser). As per MPEP 706.02(j), to establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure (In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)).

The Togher reference teaches an electronic brokerage system with credit management. The system of Togher allows traders to trade financial instruments by extending some, but not all, credit to one another by displaying the best market quote made by a trader at a trading floor and displaying the best dealable quote made by one or more credit bearing counterparties. The trader can then accept the best dealable quote displayed in the best dealable price area.

Rosser et al. teach a method of **anonymous targeted insertion of indicia into video broadcasts**. Individual televisions or other video reception devices are associated with set-top boxes that monitor the usage and viewing habits of the television set or other video reception devices. A viewer profile derived from data acquired from said monitoring is created wherein the viewer profile indicates certain characteristics about the viewer. This profile is transmitted to a centralized database, said centralized database being an intermediate link between the origin of the video broadcast and the end viewer. **The insertable indicia described within the Rosser are advertisements that are used to target various demographic profiles.**

Applicants respectfully assert that the Togher et al. reference could not have been combined with Rosser by one of ordinary skill in the art, as there would have been no teaching, suggestion, or motivation for allowing such a combination. Specifically, Togher relates to **credit management** for an electronic brokerage system, whereas, Rosser relates to **targeted advertising** web-related data. Applicants respectfully assert that one of ordinary skill in the art would have not been able to combine specific features of Togher et al. with specific features of Rosser without a teaching, suggestion, or motivation.

The Examiner is reminded that, in order to establish a case of prima facie obviousness there must also be shown a motivation to combine the teachings of the cited references, namely Togher et al. and Rosser. To that end, some suggestion of the desirability to combine the references must be found and demonstrated in the references. This burden cannot be satisfied by simply asserting that the modification would have been “well within the ordinary skill of the art.”

As the CAFC stresses for a §103 rejection to stand, the Examiner is required to show with evidence the motivation, suggestion or teaching of the desirability of making the specific combination at issue. That evidence is required to counter the powerful attraction of a hindsight-based obviousness analysis. See, for example, *In re Lee*, 277 F.3d 1338, 1343, 61 U.S.P.Q. 2d 1430, 1433 (Fed. Cir. 2002) ("Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references"). It is respectfully submitted that this involves more than a mere bold assertion that it would be obvious to combine the cited references. With respect, the Examiner has failed to indicate why one of ordinary skill in the art would be motivated to combine the teachings of Togher et al. and Rosser. *In re Lee* requires that the record must state with particularity all the **evidence and rationale** on which the PTO relies for a rejection and sets out that it is necessary to explain the reasons one of ordinary skill in the art would have been motivated to select the references and to combine them to render the claimed invention obvious.

Under *Lee*, the PTO must **state in writing the evidence** on which it bases its rejection. With respect, the present office action falls short of this requirement.

Applicants submit that there is no suggestion of the desirability to combine the Togher et al. and Rosser references, nor is there any motivation demonstrated in either of the references to combine them, nor is there any suggestion in either reference to adapt their teachings to provide

the unique features of the present invention. Applicants also respectfully submit that the Examiner has failed to show, **with evidence**, a motivation, suggestion or teaching of the desirability of making the specific combination at issue. For the foregoing reasons, reconsideration is respectfully requested.

Furthermore, even for argument purposes, it is assumed that references were to be combined; Applicants respectfully maintain that such a combination would not teach the features of Applicants' pending claims.

On page 2 of the office action of 05/24/2006, the Examiner cites the abstract and paragraphs 3, 6-9, 34, 39, and 43 of Togher as teaching all features of Applicants' independent claims 1 and 27, **except** for the feature of "**the anonymous buyer profile used multiple times to develop historical usage therefore, the historical usage representing a sophisticated buyer**" (emphasis added). Applicants agree with the Examiner's statement on page 2 that the Togher reference fails to teach Applicants' feature of "the anonymous buyer profile used multiple times to develop historical usage therefore, the historical usage representing a sophisticated buyer." However, Applicants respectfully disagree with the Examiner that the Rosser reference teaches these limitations.

Specifically, the Examiner cites the abstract and column 4, lines 15-48 and column 8, lines 39-55 of Rosser as teaching Applicants' "anonymous buyer profile used multiple times to develop historical usage thereof, the historical usage representing a sophisticated buyer." Column 4, lines 15-48 and column 8, lines 39-55 of Rosser merely teaches how **a broadcaster**



can use viewer usage profiles as part of the broadcast in for instance, the vertical blanking interval (VBI), along with the advertisers insertion also in the VBI. In the same citation Rosser clarifies this via an example, where, on a widely watched event, such as the super bowl, a car company may chose to present different models, depending on the demographic or psychographic profile of the family, based on their viewing habits. In this example, a **family with a viewing profile** that includes significant viewing of young children's programs is assumed to have children and may be shown advertisements for a mini-van, while a **family with a profile** that includes significant viewing of programs for out-door sports may be shown an advertisement for a sports utility vehicle made by the same company.

The Examiner's citation by repeatedly referring to a **family with a profile** contradicts the Examiner's conclusion that the Rosser reference teaches an "**anonymous buyer profile**" that is used multiple times to develop historical usage therefore, the historical usage representing a sophisticated buyer.

Applicants respectfully direct the Examiner's attention to column 3, lines 8-12 which specifically states that

“the proposed targeting mechanism of this, application, **Anonymous Target Profiling**, effectively targets viewers profile factors without making them publicly available in a way that ensures profile factors are close to 100% current” (emphasis added).

It can be seen from the above citation that the “**Target Profiling**” is what remains anonymous in Rosser **NOT** a “**buver profile**” (as the Examiner asserts). Applicants respectfully assert that an “anonymous buyer profile” is **NOT** the same as Rosser’s “anonymous target profiling”.

If the Examiner still feels that Rosser’s “**Anonymous Target Profiling**” can be equated to Applicants’ “**Anonymous Buyer Profile**”, the Examiner is respectfully reminded, as noted in the MPEP 707.05, that “the Examiner should cite appropriate prior art which is nearest to the subject matter defined in the claims. When such prior art is cited, its pertinence should be explained.” Applicants respectfully request that the Examiner specifically show in the Rosser reference the following element: anonymous buyer profile used multiple times to develop historical usage thereof, said historical usage representing a sophisticated buyer and included within at least one of said one or more automated surveyors. Absent such a teaching, Rosser does teach or suggest the required feature of an “anonymous buyer profile” as provided in independent claims 1 and 27.

With respect to independent claim 12, Applicants agree with the Examiner’s statement on page 5 of the office action that “Togher et al. fail to teach the sophisticated buyers developed by historical use of anonymous buyer profiles” as provided in claim 12. However, Applicants respectfully disagree with the Examiner’s contention that Rosser teaches a method of electronically presenting information to sellers about “the sophisticated buyers developed by historical use of anonymous buyer profiles.”

The Examiner again references Rosser's column 4, lines 15-48 and column 8, lines 39-55. As noted above, the Examiner's citation merely discloses a **family with a profile** and makes NO hint or suggestion for the **historical use of anonymous buyer profiles**. It is respectfully requested that the Examiner specifically show in the Foth reference the step of **sophisticated buyers developed by historical use of anonymous buyer profiles**. Absent such a showing, it is respectfully submitted that the individual references themselves or the combination of the Togher and Rosser references anticipate or render obvious Applicants claim 12.

With respect to independent claim 21, Applicants agree with the statement on page 7 of the office action that "Togher et al. fail to teach a system of generating fictitious user names." However, Applicants disagree with the Examiner's statement that "Foth et al. teach a system of generating fictitious user names." The Examiner once again relies on Rosser's column 4, lines 15-48 and column 8, lines 39-55 of Rosser as providing the features of claim 21. The above-mentioned arguments substantially apply to independent claim 21 as it recites many of the features recited in independent claims 1 and 12. Again, it is respectfully requested that the Examiner specifically show in the Rosser reference the steps of: (1) **generating fictitious user names**; (2) **requesting price quotes using said fictitious name(s)**; (3) **building reputation of said fictitious name(s) as sophisticated buyer(s)**; (4) **continuously scanning commercial sites on a network using said sophisticated buyers to retrieve product price information, including at least quotes**; (5) **generating statistical distribution of said quotes**, and (6) **comparing a quote a known buyer receives to what has been observed in the system by the sophisticated buyer**.

Based on the arguments presented above, Applicants respectfully contend that the combination of the combination of Togher and Rosser references fail to render obvious many of the limitations of independent claims 1, 12, 21, and 27. Hence, Applicants respectfully request the Examiner to withdraw the 35 U.S.C. §103(a) rejections of claims 1, 12, 21, and 27, and further request allowance thereof. Applicants also request the Examiner to withdraw the rejections with respect to dependent claims 3-11, 13-16, 23-26, and 28 as they depend upon an allowable independent claim.

#### SUMMARY

As has been detailed above, none of the references, cited or applied, provide for the specific claimed details of applicant's presently claimed invention, nor renders them obvious. It is believed that this case is in condition for allowance and reconsideration thereof and early issuance is respectfully requested.

As this response has been timely filed, no request for extension of time or associated fee is required. However, the Commissioner is hereby authorized to charge any deficiencies in the fees provided to Deposit Account No. 09-0441.

If it is felt that an interview would expedite prosecution of this application, please do not hesitate to contact applicant's representative at the below number.

Respectfully submitted,

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February 2, 2007